BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

OPINION OF THE COURT BELOW

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit is reported in 116 Fed. (2d) 748-752, appears in the Record at pages ..... to ....., and is also printed in the Appendix to this brief, post p. 15-24.

II

JURISDICTION

A statement concerning jurisdiction appears under "B" on page 3 of the petition.

III

STATEMENT OF THE CASE

A statement of the case appears under "Summary Statement" on page 1 of the petition.

IV

SPECIFICATION OF ERROR

A specification of error is set forth under "Reasons Relied on for Allowance of the Writ" on page 4 of the petition.

V

SUMMARY OF ARGUMENT

The only act which petitioner was found by respondent to have done which constituted an unfair labor practice, was to refuse to embody in the signed agreement with the union a clause recognizing the union as the representative of all the employees in the appropriate unit, instead of just its own members.

There is nothing in the record or in the respondent's finding to indicate that petitioner had, or would in the future, engage in any of the unfair labor practices defined by the Act other than that defined in Section 8(5), which is also a violation of section 8(1).

The decree improperly subjects petitioner to contempt proceedings for alleged unfair labor practices unrelated to any which were committed, or which there was any likelihood of petitioner committing in the future.

ARGUMENT

I

The case at bar is in no material particular distinguishable from the case of *National Labor Relations Board v. Express Publishing Company*, No. 442, decided March 3, 1941, 9 U. S. Law Week, p. 4240. In each the employer was found to have refused to bargain collectively with the Union. This violation of Section 8(5) of the Act was also, in that particular, a violation of Section 8(1). In neither case did the record hint, or the Board find, that the employer had been guilty of, or contemplated committing, any unfair labor practice other than that defined in Section 8(5).

In each case the Board issued an order which directed the employer to cease and desist from refusing to bargain collectively with the Union and to cease and desist from

> "in any *other* manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act."

The word "other," which has been italicized in the quotation, appeared in the order in the case at bar. It did not appear in the order in the *Express Publishing* case. Otherwise the two orders are exactly as quoted. So, too, is the decree in the Circuit Court of Appeals in the present case.

This Court has decided in the *Express Publishing* case that such a decree, employing the broad language of Sections 7 and 8(1), cannot be entered in a case where there is no indication that the employer in the future would engage in any of the other unfair labor practices defined by the Act.

This case is in every respect as strong, and in many respects stronger, than the *Express Publishing* case. In that case the employer "refused to discuss in detail the proposals of the Guild, to make any counter proposals or to enter into any agreement with it."

In the case at bar petitioner bargained extensively and genuinely with the Union, and the only guilt found against it turned on the wording of the recognition clause. The findings of fact of the Board contain the following:

> "We have noted that on June 28, 1937, the respondent executed three collective agreements covering its Indianapolis, Connersville, and St. Louis plants, respectively, and that on March 25, 1938, the respondent opened negotiations with Locals 226, 315, and 231 for the modification and renewal of these agreements. The parties met in a series of conferences over a period of eight months. At these joint conferences the respondent and the locals discussed in detail various proposals and counter-proposals and arrived at a mutual understanding on vacations, grievances, and general policy as to hours of work and seniority. These negotiations included discussions of proposed terms of employment to be applied to employees without regard to their membership in the locals. The respondent and the locals agreed that specific terms of employment for each plant in furtherance of the general policies thus agreed upon would be determined at subsequent separate conferences between the respondent and the local involved.

"The form of recognition clause to be embodied in each of the three agreements was discussed at length at the joint conferences between the respondent and the three locals. The locals submitted the following proposed clause:

> The Company agrees to recognize the International Union, United Automobile Workers of America, through its affiliated plant locals as the sole bargaining agency for its employees.

"The respondent conceded, during the negotiations, that Local 226 represented a majority of the employees and that 'there wasn't room for two sets of representatives for group bargaining in the plant.' Nevertheless it refused to incorporate into the contracts the recognition clause requested by Local 226. After extended discussion, Marvin Belflower, representative of Local 231 proposed the following clause:

> The Company recognizes the Union as the sole collective bargaining agency for those employees who are affiliated with the Union; for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment; and during the term of this contract the Company will deal with them and no others; provided that any individual employee or group of employees shall have the right at any time to present grievances to the Company.

"The respondent agreed to this limited recognition clause and resolved to stand upon it." (R. 511-512.)

* * * * * *

"The only issue presented by this record is whether the respondent has engaged in unfair labor

> practices by refusing to accept the exclusive recognition clause submitted by Local 226 and insisting instead upon the limited clause quoted above." (R. 513.)

The opinion of the Circuit Court of Appeals, which is appended hereto, (post pages 15-24) contains no intimation of a broader controversy, or of any violation of the Act by the petitioner other than its insistence on a recognition clause which did not state that the Union was the sole bargaining agency for all employees in the unit.

The relations of the petitioner to the Union, and its attitude toward collective bargaining, have been so exemplary that one member of the Board, dissenting from its decision, said:

> "The record is clear that the respondent has not questioned the right of the union to represent its employees, that it recognized the union as the choice of the majority, that it bargained with union representatives whenever requested, and that its relationships with its employees have been governed by agreements with the union since the spring of 1937." (R. p. 523.)

There is no discernible danger supported by anything in the record that petitioner will commit other unfair labor practices in the future.

II

The reasons for the decision in the *Express Publishing* case apply with particular force here. This Court there held that "the National Labor Relations Act does not give the Board an authority, which courts cannot rightly

exercise, to enjoin violations of all the provisions of the statute merely because the violation of one has been found." (9 U. S. Law Week, p. 4240, at 4242.)

This Court further said:

> "It is a salutary principle that when one has been found to have committed acts in violation of a law he may be restrained from committing other related unlawful acts. But we think that without sacrifice of that principle, the National Labor Relations Act does not contemplate that an employer who has unlawfully refused to bargain with his employees shall for the indefinite future, conduct his labor relations at the peril of a summons for contempt on the Board's allegation, for example, that he has discriminated against a labor union in the discharge of an employee, or because his supervisory employees have advised other employees not to join a union."

The employer in that case was actually refusing to reach a collective bargaining agreement. Petitioner, as appears from the findings already quoted, had signed written agreements with the Union locals in 1937, and still had such agreements with locals other than that in the particular plant involved when the hearing was held. Petitioner bargained "in a series of conferences over a period of eight months" with this local, over wages, hours, and other conditions of employment, and the negotiations failed to ripen into a new contract only because of differences over the recognition clause.

It is of great importance to petitioner that the decree should not continue in its present broad form. That fact was recognized by this Court in the *Express Publishing* case.

It may happen at some time in the future that the Board will charge petitioner with the discharge of a union employee because of his union membership. Or the Board may allege that a union existing at the plant at some time in the future is encouraged or dominated by petitioner. Or petitioner may refuse to employ an unfit applicant for employment, and may be confronted with the accusation that the refusal to employ was grounded on union membership. Or the Board may make against petitioner any one of numerous other charges of unfair labor practices which do not involve a refusal to bargain.

The Congress has established in Section 10 of the Act the procedure by which such charges shall be made and their truth determined. To the extent that petitioner has been found to have committed an unfair labor practice, and to be likely to commit it again in the future, petitioner should be enjoined against such practice. But Congress by its classification of unfair labor practices in the Act has indicated that they are not all of the same kind. Certainly those defined in Sections 8(2) and 8(3) differ from that of which petitioner was found guilty. And refusal to bargain, violating Section 8(5) is but a small part of the practices forbidden by the omnibus section 8(1).

Petitioner should not be required to conduct its business in the future in the shadow of possible contempt proceedings for every alleged unfair labor practice, no matter how remote in character from that found in the case at bar. Petitioner should not be subject to the penalties of contempt for such unrelated practices. To so decree, as the Circuit Court of Appeals has done, is to substitute the procedure and penalties of contempt for the procedure and remedies of the Act, for every charge of unfair labor practice after the first Board order is enforced. Congress clearly did

not so intend as this Court has clearly recognized in the recent opinion cited herein.

It is submitted that the decision of the United States Circuit Court of Appeals for the Seventh Circuit conflicts directly with the decision of this Court in *National Labor Relations Board v. Express Publishing Company*, No. 442, decided March 3, 1941, 9 U. S. Law Week, p. 4240. The petition should be granted and the judgment reversed.

Respectfully submitted,

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